

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
FRANK SOLLAZZO	NO. 2008-SW- 14
Pottawattamie County, Iowa	

TO: Frank Sollazzo
20394 Husker Lane
Council Bluffs, IA 51503

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Frank Sollazzo for the purpose of resolving improper disposal of solid waste violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Dan Stipe, Supervisor
DNR Field Office 4
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code section 455B.307(2) which authorizes the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the director to assess administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

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III. STATEMENT OF FACTS

1. Mr. Sollazzo neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.
2. Mr. Sollazzo owns a parcel of land approximately 28 acres in size (Sollazzo site) which is located in Section 14, T75N, R42W, Pottawattamie County, and locally known as 20394 Husker Lane, Council Bluffs, Iowa. D&D Construction Services, Inc. (D&D) is a construction and environmental remediation company based out of Council Bluffs, Iowa. D&D has routinely used this site for the disposal of solid waste for an extended period of time. Mr. Sollazzo had given D&D permission to dispose of wet soil and beneficial fill on the property to fill washout areas. In 2002, during an investigation at Mr. Sollazzo's property, violations of DNR's solid waste regulations were documented. A letter was sent to Mr. Sollazzo informing him of the DNR regulation and directing him to dispose of all waste materials at an approved sanitary disposal project.
3. On April 26, 2007, DNR Field Office 4 received a complaint alleging that PCS was being improperly disposed of at the Sollazzo site. Thad Nanfito of DNR Field Office 4 conducted a preliminary investigation of the site. During the investigation, Mr. Nanfito observed construction and demolition waste and PCS at the site. It was determined that the PCS discovered on the property was hauled to the site by D&D. The contaminated soil had been scraped off the parking lot of a convenience store where underground storage tanks had been removed. The construction and demolition debris originated from a drive-in movie theater in Council Bluffs. Mr. Sollazzo stated that he allowed Dennis Collins of D&D to haul dirt and trees to the ditch behind his residence and to deposit material on the site. During the investigation, Mr. Sollazzo called Mr. Collins who stated, according to Mr. Sollazzo, that some waste which should have gone to a landfill, but was mistakenly brought to the Sollazzo site.
4. On May 4, 2007, DNR Field Office 4 personnel received a phone call from Mr. Collins of D&D. Mr. Collins stated that D&D would see to the removal of the wood waste from the site. He further stated that the waste materials at the Sollazzo site had come from the former drive-in theater in Council Bluffs. DNR personnel explained that there were concerns that asbestos containing material was present in the waste at the Sollazzo site. Mr. Collins stated that asbestos testing had been completed as part of the demolition project.
5. On May 23, 2007, Keith Wilken, Field Office 4 and Tom Wuehr, DNR Air Quality conducted a follow-up inspection at the Sollazzo site. During the inspection, samples of suspected asbestos containing material were collected for analysis. One of the samples was a natural gas pipe with suspect wrap remaining on it. Upon receipt of the laboratory results it was confirmed that regulated quantities of asbestos containing material were present in the wrap of the natural gas pipe.
6. On June 8, 2007, DNR Field Office 4 personnel contacted D&D and informed Mr. Collins not to remove any of the waste materials from the site until DNR decided how to

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proceed. During the call, Mr. Collins informed DNR that Council Bluffs Industrial Foundation (CBIF) owned the former drive-in theater where the waste had originated and that Peterson Contractors, Inc. (PCI) was responsible for the demolition project.

7. On June 14, 2007, DNR Field Office 4 personnel contacted D&D. Mr. Collins stated that PCI did the demolition work and D&D only hauled the waste materials to the site. Mr. Collins stated that D&D trucks were hired by PCI to haul the construction and demolition waste. D&D also faxed a letter from Terracon, a consulting and engineering group, regarding the asbestos abatement at the drive-in theater. The letter stated that no further asbestos containing material remained in the drive-in theater structures.

8. On June 15, 2007, DNR Field Office 4 personnel conducted another inspection of the Sollazzo site at the request of PCI. The purpose of the visit was to discuss the abatement and disposal of the waste materials from the site. Mr. Fleshner, PCI Project Manager, stated that he would discuss the issues with Mr. Sollazzo and then develop a plan to remedy the situation. DNR was later notified PCI would remove all of the debris above ground.

9. On June 22, 2007, DNR issued a NOV letter to the four parties involved with the improper disposal of solid waste at the Sollazzo site: Frank Sollazzo, D&D, CBIF, and PCI. The letter required that the parties submit a plan of action (POA) regarding the cleanup and disposal of waste material. On July 6, 2007, PCI submitted a POA to DNR regarding the asbestos abatement and removal of the solid waste items from the Sollazzo site.

10. On or around August 21, 2007, PCI contacted Matt Rhodes at DNR Field Office 4 that the clean up of the surface material had been completed by PCI. PCI stated that approximately 400 tons of debris, including the natural gas pipe, was taken to a landfill in David City, Nebraska. All of the debris was taken to the landfill as asbestos containing waste.

11. At the request of the DNR, Mr. Collins trenched several areas of the Sollazzo site and removed soil and solid waste from the site. Mr. Collins stated that his company has spent approximately \$35,000.00 in trenching, removing, grading and seeding at the Sollazzo as a required by the DNR. In at least one of trenches construction and demolition waste from a house was discovered.

IV. CONCLUSIONS OF LAW

1. Mr. Sollazzo neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

2. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-121.

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3. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. Mr. Sollazzo owns the site where a substantial amount of improperly deposited solid waste was found. D&D has acknowledged previous use of the Sollazzo site for solid waste disposal and that its trucks and drivers were used in the transportation of the demolition waste from the Council Bluffs drive-in theater to the Sollazzo site. Additionally, the trenching discovered evidence of other solid waste that had been disposed of at the Sollazzo site. The above facts demonstrate non-compliance with this provision.

4. 567 IAC 120.4(1) states petroleum containing soil shall not be landfarmed without a permit from DNR. On April 26, 2007, DNR staff documented improper disposal of PCS at Mr. Sollazzo's property. The above facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, the DNR orders and Mr. Sollazzo agrees to do the following:

1. Mr. Sollazzo shall file an affidavit explanatory of title with the Pottawattamie County Recorder denoting the burial of solid waste on his property located at 20394 Husker Lane in Council Bluffs, Iowa within 30 days of the date the director signs this administrative consent order and shall provide DNR Field Office 4 a copy of the filing within 10 days of the filing;
2. Mr. Sollazzo shall properly secure his property by installing and maintaining a locked fence at the entrance area of the pasture where the previous dumping has occurred;
3. Mr. Sollazzo shall comply with all solid waste disposal rules and regulations in the future; and
4. Mr. Sollazzo shall pay a penalty of \$3,500.00 within 30 days of the date the director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.
2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR

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has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$10,000.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Sollazzo did not obtain an economic benefit by allowing D&D to dispose of solid waste on the property and some of the solid waste has now been properly disposed of. Therefore no economic benefit is being assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has determined at this time the most equitable and efficient means of resolving the matter is through an administrative consent order. Failure to properly dispose of solid waste threatens the integrity of the regulatory program. Tax dollars were expended to investigate, document, and respond to this violation. Improper PCS and solid waste disposal can degrade water quality and contribute contaminants to both land and water resources as well as threaten the public health. Based on the above considerations, \$2,000.00 is assessed for this factor.

Culpability – Mr. Sollazzo has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Sollazzo has been previously apprised of the solid waste regulations. Based on the above considerations, \$1,500.00 is assessed for this factor.

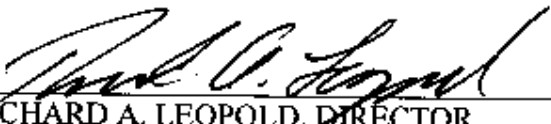
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Mr. Sollazzo. For that reason Mr. Sollazzo waives his rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

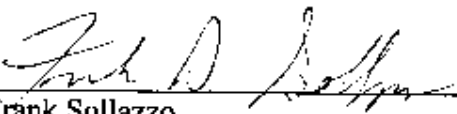
Compliance with section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in section "IV. Conclusions of Law" of this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 11 day of
July, 2008.



Frank Sollazzo

Dated this 25 day of
June, 2008.

Barb Stock (Con 10-6 Pottawattamie County); Kelli Book; Field Office 4; Dan Stipe; VI.C.